

TITLE 42. THE PUBLIC HEALTH AND WELFARE
CHAPTER 21. CIVIL RIGHTS
GENERALLY

42 USCS § 1981a (2000)

§ 1981a. Damages in cases of intentional discrimination in employment

(a) Right of recovery.

- (1) Civil rights. In an action brought by a complaining party under section 706 or 717 of the Civil Rights Act of 1964 (*42 U.S.C. § 2000e-5* [or 2000e-16]) against a respondent who engaged in unlawful intentional discrimination (not an employment practice that is unlawful because of its disparate impact) prohibited under section 703, 704, or 717 of the Act (*42 U.S.C. § 2000e-2* or 2000e-3 [or 2000e-16]), and provided that the complaining party cannot recover under section 1977 of the Revised Statutes (*42 U.S.C. § 1981*), the complaining party may recover compensatory and punitive damages as allowed in subsection (b), in addition to any relief authorized by section 706(g) of the Civil Rights Act of 1964 [*42 USCS § 2000e-5(g)*], from the respondent.
- (2) Disability. In an action brought by a complaining party under the powers, remedies, and procedures set forth in section 706 or 717 of the Civil Rights Act of 1964 [*42 USCS § 2000e-5(g)*] (as provided in section 107(a) of the Americans with Disabilities Act of 1990 (*42 U.S.C. § 12117(a)*), and section 505(a)(1) of the Rehabilitation Act of 1973 (*29 U.S.C. § 794a(a)(1)*), respectively) against a respondent who engaged in unlawful intentional discrimination (not an employment practice that is unlawful because of its disparate impact) under section 501 of the Rehabilitation Act of 1973 (*29 U.S.C. § 791*) and the regulations implementing section 501 [*29 USCS § 791*], or who violated the requirements of section 501 of the Act [*29 USCS § 791*] or the regulations implementing section 501 [*29 USCS § 791*] concerning the provision of a reasonable accommodation, or section 102 of the Americans with Disabilities Act of 1990 (*42 U.S.C. § 12112*), or committed a violation of section 102(b)(5) of the Act [*42 USCS § 12112(b)(5)*], against an individual, the complaining party may recover compensatory and punitive damages as allowed in subsection (b), in addition to any relief authorized by section 706(g) of the Civil Rights Act of 1964 [*42 USCS § 2000e-5(g)*], from the respondent.
- (3) Reasonable accommodation and good faith effort. In cases where a discriminatory practice involves the provision of a reasonable accommodation pursuant to section 102(b)(5) of the Americans with Disabilities Act of 1990 [*42 USCS § 12112(b)(5)*] or regulations implementing section 501 of the Rehabilitation Act of 1973 [*29 USCS § 791*], damages may not be awarded under this section where the covered entity demonstrates good faith efforts, in consultation with the person with the disability who has informed the covered entity that accommodation is needed, to identify and make a reasonable accommodation that would provide such individual

with an equally effective opportunity and would not cause an undue hardship on the operation of the business.

(b) Compensatory and punitive damages.

- (1) Determination of punitive damages. **A complaining party may recover punitive damages under this section against a respondent (other than a government, government agency or political subdivision) if the complaining party demonstrates that the respondent engaged in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the federally protected rights of an aggrieved individual.**
 - (2) Exclusions from compensatory damages. Compensatory damages awarded under this section shall not include backpay, interest on backpay, or any other type of relief authorized under section 706(g) of the Civil Rights Act of 1964 [~~42 USCS § 2000e-5(g)~~].
 - (3) Limitations. The sum of the amount of compensatory damages awarded under this section for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses, and the amount of punitive damages awarded under this section, shall not exceed, for each complaining party—
 - (A) in the case of a respondent who has more than 14 and fewer than 101 employees in each of 20 or more calendar weeks in the current or preceding calendar year, \$50,000;
 - (B) in the case of a respondent who has more than 100 and fewer than 201 employees in each of 20 or more calendar weeks in the current or preceding calendar year, \$100,000; and
 - (C) in the case of a respondent who has more than 200 and fewer than 501 employees in each of 20 or more calendar weeks in the current or preceding calendar year, \$200,000; and
 - (D) in the case of a respondent who has more than 500 employees in each of 20 or more calendar weeks in the current or preceding calendar year, \$300,000.
 - (4) Construction. Nothing in this section shall be construed to limit the scope of, or the relief available under, section 1977 of the Revised Statutes (*42 U.S.C. § 1981*).
- (c) Jury trial. If a complaining party seeks compensatory or punitive damages under this section-
- (1) any party may demand a trial by jury; and
 - (2) the court shall not inform the jury of the limitations described in subsection (b)(3).